

GAO 98-46  
Proc II

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D. C. 20548

10,326

FILE: B-192687

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DATE: June 5, 1979

MATTER OF: Mor-Flo Industries, Inc.

*[Protest Alleging Erroneous Bid Evaluation]*

DIGEST:

Award evaluation may not be based on information furnished after bid prices are revealed when information differs from that submitted with bid. Evaluation basis in IFB is controlling and bidder relied on contrary oral advice and past practices at its own risk.

Mor-Flo Industries, Inc. protests certain actions under a General Services Administration (GSA) procurement alleging an erroneous bid evaluation. Based on our analysis of the record, which follows, the protest is denied. AGC 00617

GSA invited bids under solicitation No. FPGA-LM-90123-A-4-3-78 (IFB) to establish a Federal Supply Schedule for gas and electric domestic water heaters of various styles and capacities. Under the terms of the IFB, bidders were required to furnish a price and Service Efficiency (SE) rating for each type of water heater bid. The solicitation provided a method for determining the life cycle cost for each item in which the price and SE rating were considered. Under the IFB's "Method of Award Clause", award was to be made on an item-by-item basis to the responsive, responsible bidder offering the lowest life cycle cost. GSA reports that it utilizes this acquisition technique (a concept which considers operating, maintenance, and other costs of ownership as well as acquisition price) to insure that the unit procured will result in the lowest overall cost to the Government.

Under the written terms of the IFB, bidders were required to furnish with their bids SE ratings to which they would be contractually bound. However,

*Bid evaluation  
Bid requirements  
Bid responsiveness*

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GSA orally informed bidders that the SE ratings to be used in the evaluation formula would be determined by post-bid opening tests conducted by a GSA quality control representative. The SE ratings obtained from such tests would then be substituted for the SE ratings submitted with the bid in evaluating bids. This procedure was also used in past procurements for water heaters and the successful bidder was then required to perform in accordance with the substituted SE ratings.

Subsequent to bid opening GSA completed on-site testing for SE ratings of water heaters selected by Mor-Flo and Rheem Water Heater Division, the two bidders under consideration for award. GSA subsequently determined that under the written terms of the IFB such actions could not be accomplished, and concluded that the only SE ratings which could properly be used in the evaluation formula would be the SE ratings originally bid. In this connection, GSA cites our decision at 40 Comp. Gen. 160, 162 (1960) which states, in pertinent part:

"\* \* \* the evaluation of bids on the basis of \* \* \* information solicited and furnished after bid prices are revealed is contrary to the established principles governing competitive bidding \* \* \*."

Moreover, according to a GSA statement, uncontested by the protester, Mor-Flo informed contracting officials that the water heaters used in these tests were different from those used to compute the SE ratings included in the Mor-Flo bid. To allow the post-bid opening substitution of SE ratings or the substitution of water heaters differing from those used to establish the SE ratings as bid would be tantamount to allowing the submission of a new bid, something clearly prohibited in a formally advertised procurement. See, e.g., 45 Comp. Gen. 221 (1965).

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In regard to GSA's oral representations concerning the method of award evaluation, it is well established that the award of a contract pursuant to the advertising statutes must be made on the same written terms that

were offered to all bidders. Tennessee Valley Service Company, 57 Comp. Gen. 125 (1977), 77-2 CPD 442. Further, the instant IFB states that oral explanations or instructions provided to bidders are not binding. Standard Form 33A, "Solicitation Instructions and Conditions", paragraph 3. Therefore, we do not consider reasonable Mor-Flo's reliance on the oral advice of GSA to the effect that a contract could be awarded on a basis other than that prescribed in the written solicitation. Kinetic Systems, Inc.--Reconsideration, B-189146, August 17, 1977, 77-2 CPD 126. As such, Mor-Flo relied upon the oral advice at its own risk and must, therefore, suffer the consequences of such reliance. BASF Systems, Inc., B-192456, October 12, 1978, 78-2 CPD 275 and decisions cited therein.

The mere fact that in prior procurements GSA erroneously used post-bid opening, test-generated SE figures extrinsic to the bids submitted does not justify a repetition of the same practice. See Acme Paper & Supply Co., Inc., et al., B-187439, January 18, 1977, 77-1 CPD 38; 36 Comp. Gen. 535, 540 (1957).

Contracts were awarded to Rheem and Mor-Flo in accordance with the groupings of line items for which each was evaluated low, except for three contract line item groups (21-24, 37-40 and 69-72) which were erroneously awarded to both contractors. After detecting this error, and because Rheem was in fact low for the three groups in question on the basis of the bids as submitted, GSA took immediate steps to delete the three groups of items from the Mor-Flo contract. We believe GSA's action is reasonable and is necessary to remedy the erroneous duplicate awards.

The protest is denied.

*R. F. K. M.*  
Deputy Comptroller General  
of the United States